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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re Jose O. et al., Persons Coming Under
the Juvenile Court Law.

B253932

(Los Angeles County
Super. Ct. No. DK01582)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

Danielle V.,

Defendant and Appellant.

APPEAL from a judgment and orders of the Superior Court of Los Angeles County, Annabelle Cortez, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant Danielle V.

Office of County Counsel, John F. Krattli, James M. Owens, and Jessica S. Mitchell for Petitioner and Respondent Department of Children and Family Services.

INTRODUCTION

Mother Danielle V. appeals from the juvenile court's judgment finding jurisdiction under Welfare and Institutions Code¹ section 300, disposition order under section 361 removing her sons Jose O. and Jonathan V. from her care, and order requiring Mother's visits with the children to be monitored. We affirm because the jurisdictional finding and the disposition order were supported by substantial evidence that there was a substantial risk the children would suffer serious physical harm as a result of Mother and Father's failure to adequately supervise and protect the children. Short of removal from Mother's custody, there were no reasonable means to avert harm to the children. The court did not abuse its discretion in ordering monitored visits for Mother based on her unresolved substance abuse, inappropriate discipline, and association with a dangerous individual.

FACTS AND PROCEDURAL BACKGROUND

Mother has two sons, six-year-old Jose and four-year-old Jonathan, whose fathers are Jose O. and Leonel V. (Father²), respectively. Although Mother and Father divorced in 2010 after a short marriage, they continued to date and live with each other into 2013. At the time of the dependency proceedings, Mother and Father separated because of Father's domestic violence toward Mother. In July 2013, Mother and the children began living in the home shared by maternal grandmother, maternal grandmother's boyfriend, and maternal great-grandfather(the family home). Mother's boyfriend Richie, who is a parolee that law enforcement appeared to be searching for, also lived in the home for periods of time. Jonathan left Mother's home and began living with Father in August 2013. Although Mother had no previous dependency history as an adult, Mother was a former dependent of the juvenile court as a result of the maternal grandmother's convictions for child sexual abuse in December 2001 and March 2002, which resulted

¹ All subsequent statutory references are to the Welfare and Institutions Code.

² We refer to Leonel as Father because he has taken on a parental role for both children, and father Jose O. has not been involved in the children's lives prior to the dependency proceedings.

from maternal grandmother having a sexual relationship with Mother's then-13-year-old boyfriend.

The Department of Children and Family Services (DCFS) began investigating Mother and Father's care of Jose and Jonathan in August 2013, after receiving a child abuse referral reporting that Mother was on methamphetamine, left the children for days at a time with the maternal grandmother who abused marijuana, and exposed the children to her boyfriend Richie, who was a parolee at large. Through the investigation, DCFS discovered that Mother and Father inappropriately disciplined the children, that Richie physically abused Jonathan, that Father abused alcohol, that Mother had an unresolved history of substance abuse and current abuse of alcohol, and that Mother and Father had a history of engaging in domestic violence in the children's presence.

With regard to the physical abuse, Mother hit Jonathan on his tailbone with a belt and her hand, and hit Jose on his head with a belt. On one occasion when Mother spanked Jonathan's hands, she cut him. Jonathan indicated that the abuse sometimes occurred after Mother drank alcohol. In addition, after Jonathan was born, Father began spanking Jose and grabbing him by the ears. Once, Father hit Jose on his butt hard enough to cause bruising. On another occasion, Father, while inebriated, threatened to hurt Jose, resulting in Father's arrest for felony threats and immoral acts against Jose.

Furthermore, Mother and Father have an extensive history of domestic violence, and separated on that basis just prior to the DCFS investigation. Both children reported that they witnessed Father hit, push, and abuse Mother, which often occurred when Father was intoxicated. Father has an extensive criminal history evidencing his alcohol abuse and violent behavior. Between 2006 and 2013, Father was arrested three times for driving under the influence and three times for being drunk in public. In 2001, Father was convicted of attempted murder. In 2010 and 2012, Father was convicted of spousal battery; the latter conviction involving a deadly weapon. During one of the more serious domestic violence incidents, Father threatened Mother with a butcher knife. Mother admitted to leaving Father numerous times because he was abusive to her and Jose, but she stated that she would always end up going back to him.

Mother also had a drinking problem, evidenced by many the numerous empty beer and bottles in her garage and Jonathan's statement that Mother gets drunk and hits him and his brother. Mother had also previously used methamphetamines, although it is unclear whether she was presently using that drug. Mother agreed to drug testing, but failed to show up for two of the three random drug tests, despite DCFS offering to provide her transportation to the testing site.

While living in the family home, Mother would leave her children with maternal grandmother and great-grandfather for several days at a time, disappearing with Richie. When Mother was home, she spent time with Richie, a parolee who frequently drank, used drugs, and was mean to the children. One night when Jose was home, Richie broke a window and multiple doors in the family home. On another occasion, Richie pushed Jonathan in the face. Despite the danger Richie posed to the children, Mother refused to turn Richie in to law enforcement.

Throughout the dependency proceedings, Mother was unable to obtain stable housing or a telephone. Mother declined the social worker's offer to provide referrals to homeless shelters for her and the children. And, despite DCFS informing Mother that six-year-old Jose was required by law to be in school, Mother failed to enroll him. Based on observations of general abuse and neglect of Jose and Jonathan, DCFS detained the children on September 26, 2013. In October 2013, after moving out of the family home, Mother burglarized the home and pled no contest to burglary. The maternal grandmother subsequently filed a restraining order against Mother, and Mother could not return to the family home.

At the jurisdiction and disposition hearing, the juvenile court found jurisdiction under section 300, subdivision (b) and subdivision (j). Under subdivision (b), the court sustained DCFS's allegations that (1) Mother inappropriately disciplined both Jose and Jonathan by striking their faces, (2) Father inappropriately disciplined Jose by striking his butt, which caused bruising, (3) Mother's boyfriend Richie physically abused Jonathan by pushing on his face, which Mother knew of and failed to protect Jonathan from, (4) Mother and Father have a history of engaging in verbal and physical altercations in

the presence of the children, and Mother failed to protect the children from the father, who had unlimited access to them, (5) Father has abused alcohol and Mother has not protected the children from the dangers posed by his abuse, and (6) Mother has a history of substance abuse and currently abuses alcohol, rendering her incapable of providing regular care and supervision of the children. Under subdivision (j), the court sustained DCFS's allegations that there is substantial risk that Jose will be abused or neglected because Jonathan was abused by Mother. Similarly, the court sustained DCFS's subdivision (j) allegation that there is substantial risk that Jonathan will be abused or neglected based Mother and Father's physical abuse of Jose.

Without providing a statement of facts to support removal, the court found by clear and convincing evidence that substantial danger existed to the physical health of the children, there were no reasonable means to protect them without removal, and reasonable efforts were made to prevent or eliminate the need for removal. The court ordered the children to be removed from the parents and that Mother was to have monitored visitation with them. The court also ordered that Mother participate in a drug and alcohol program, submit to random or on-demand drug and alcohol testing, parenting classes, individual counseling to address domestic violence, substance abuse, and child abuse issues.

DISCUSSION

1. Standards of Review

Mother appeals the court's jurisdictional findings, disposition order, and order requiring all visits to be monitored. We review the juvenile court's jurisdictional findings and disposition orders for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966.) "Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value." (*In re R.C.* (2012) 210 Cal.App.4th 930, 940.) Although substantial evidence may consist of inferences, the inferences must be logical, reasonable and supported by evidence; the inferences cannot be the product of speculation or conjecture. (*In re Savannah M.* (2005) 131 Cal.App.4th

1387, 1393-94.) Conflicts in the evidence and reasonable inferences are resolved in favor of the prevailing party. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564, 135.)

“[I]ssues of fact and credibility are questions for the trier of fact.” (*Ibid.*) The juvenile determination will not be disturbed unless it exceeds the bounds of reason. (*Ibid.*)

In addition, “[w]e review an order setting visitation terms for abuse of discretion. [Citations.] We will not disturb the order unless the trial court made an arbitrary, capricious, or patently absurd determination. [Citation.]” (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.)

2. *The Jurisdictional Findings Were Supported by Substantial Evidence*

Mother contends the evidence is insufficient to support the juvenile court’s jurisdictional finding under section 300. The court found jurisdiction under and we affirm its judgment pursuant to both subdivisions (b) and (j) of section 300.

Subdivision (b) of section 300 states that a child falls within the jurisdiction of the juvenile court when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his ... parent ... to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent ... to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with ... shelter, ... or by the inability of the parent or guardian to provide regular care for the child due to the parent’s ... substance abuse.” To find jurisdiction under section 300, subdivision (b) requires the court has to find neglectful conduct by the parent, causation and serious physical harm or a substantial risk of serious harm to the child. (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) “The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ [Citation.]” (*Ibid.*)

Section 300, subdivision (j) provides jurisdiction where there is evidence that “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as

defined in those subdivisions.” In evaluating whether there is substantial evidence of abuse, the juvenile court “consider[s] the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.” (Section 300, subd. (j).) “In determining whether the child is in present need of the juvenile court’s protection, the court may consider past events.” (*In re Petra B.* (1989) 216 Cal.App.3d 1163, 1169.)

We note at the outset, that because the focus of dependency proceedings is on the protection of minor children, a juvenile court need only “find that one parent’s conduct has created circumstances triggering section 300[.]” to acquire jurisdiction over a child. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491–1492 (*I.A.*)). “[I]t is commonly said that a jurisdictional finding involving one parent is ‘ “good against both. More accurately, the [child] is a dependent if the actions of either parent bring [the child] within one of the statutory definitions of a dependent.” ’ [Citation.]” (*Id.* at p. 1492.)

Here, Mother makes arguments as to many of the court’s sustained allegations, but fails to address the court’s jurisdictional findings that were based on Father’s physical abuse of Jose and on Mother’s endangerment of the children by exposing them to her boyfriend Richie. These grounds are supported by substantial evidence.

a. Father’s Inappropriate Discipline Establishes Jurisdiction Over the Children

As to Father’s abuse, Jose stated that Father beat him. Mother corroborated the existence of this physical abuse, stating that at first, Father was good with Jose, but then began spanking Jose and grabbing him by the ears after Jonathan was born. Jose stated that he believed Mother let Father hit him. Jonathan reported and Father admitted to DCFS that on one occasion, Father hit Jose on his butt and caused bruising when Jose was about five years old.

As indicated by Mother's comment that the abuse started when Jonathan was born, Father's abuse of Jose appears to have been a reoccurring problem. On another occasion in July 2013, Father became very upset and threatened "get" Jose and hurt him, when Jose called Father a jerk. Jose hid in fear in a bedroom with his family until law enforcement arrived at the house. Law enforcement found Father to be intoxicated and angry, and arrested him for felony threats and immoral acts committed on Jose.

Father's physical abuse and inappropriate discipline establishes jurisdiction over Jose under section 300 subdivision (b). Jose has clearly suffered harm from Father's physical abuse, exhibited by bruising and his fear of Father. Father's tendency toward abusive behavior, which is also exhibited in his acts of domestic violence toward Mother and criminal history, places Jose in substantial risk of serious harm in the future. Thus, jurisdiction is established over Jose under subdivision (b).

Furthermore, section 300, subdivision (j) establishes jurisdiction over Jonathan under these facts. The record shows that Father's abuse is pervasive in his relationships with the immediate family members and is exacerbated by his alcohol abuse. As Jose's sibling, there is a substantial risk that Jonathan too could be physically abused by Father when Father loses his temper and becomes violent. (See *In re T.V.* (2013) 217 Cal.App.4th 126, 133 ["A parent's past conduct is a good predictor of future behavior."].) Thus, jurisdiction is established over both children as there is a substantial risk that both children will suffer serious physical harm from Father. As the jurisdictional finding involving Father is good against Mother as well, this evidence alone establishes the court's jurisdiction under section 300.

b. Mother's Failure to Protect the Children from Her Boyfriend Establishes Jurisdiction

Additionally, substantial evidence supports a jurisdictional finding based on Mother's failure to protect Jonathan and Jose from her boyfriend, who physically abused one child and whose presence endangered both children's physical health, safety, and well-being. The physical abuse was evidenced by Jonathan's statement to a DCFS social worker that Richie had pushed him in the face. Both Jose and Jonathan stated that they

disliked Richie, who from their observations, drank a lot of beer, used drugs, and was mean to them.

On another occasion, in late September 2013, Mother moved out of the family home with Jose because Richie was acting “crazy.” The maternal grandmother reported that Richie came in and out of the family home at all hours of the night and that she called law enforcement to report that he had broken a window and doors. Jose, who was present for this encounter with Richie and witnessed Richie break the window and a door, stated to a social worker that he suspected Richie was looking to steal things to buy drugs. The social worker observed damage to a window in the kitchen, the front door, and the hall door of the family home. It also appeared that Mother’s bedroom door had been kicked in, with the door jamb broken. When DCFS contacted Mother, Mother refused to turn Richie into law enforcement, saying that if she did, “then I would be dead.” Despite Mother’s acknowledgment that Richie had become obsessed with her, was dangerous to her own safety, and caused problems within her family, Mother denied that Richie posed a risk of harm to Jose. Because mother refused to turn Richie in and allowed the children to be around him, Richie posed a substantial risk of future serious physical harm to both children. Ample evidence supports this basis for jurisdiction and Mother fails to argue otherwise.

Based on the foregoing, we affirm the court’s jurisdictional finding under section 300. Substantial evidence supports the sustained allegations that Father inappropriately disciplined Jose and Mother failed to protect the children from Richie.

3. *Substantial Evidence Supports the Disposition Order Removing the Children*

Mother asserts that DCFS should not have removed Jose and Jonathan from her care in rendering its disposition order. Under section 361, subdivision (c)(1) children may not be removed from their parent’s home “unless the juvenile court finds clear and convincing evidence” of a “substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without

removing the minor from the minor's parent's or guardian's physical custody.”

“A removal order is proper if it is based on proof of: (1) parental inability to provide proper care for the minor; and (2) potential detriment to the minor if he or she remains with the parent.” (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163.) Upon satisfying these prongs, the removal is appropriate even if the parent is not dangerous and the minor at issue has not yet been harmed. (*Ibid.*) “The focus of the statute is on averting harm to the child.” (*Ibid.*)

Initially, Mother asserts that the court “failed to carry out its duties in making the decision to remove Jose and [Jonathan] from [M]other's home” by not stating the facts on which the court based its removal decision. We agree that the court erred in this regard. Under section 361, subdivision (d), “[t]he court shall state the facts on which the decision to remove the minor is based.” As the Court of Appeal explained in *In re Ashly F.* (2014) 225 Cal.App.4th 803, 810, the court's statement of facts supporting removal plays an important role in preventing DCFS's “declarations that there were ‘no reasonable means’ other than removal ‘by which the [children's] physical or emotional health may be protected’ and that ‘reasonable efforts were made to prevent or to eliminate the need for removal’ can become merely a hollow formula designed to achieve the result the agency seeks.”

Mindful of the importance of the court's statement of facts in support of removal, we nonetheless conclude that any error here is harmless because it was not reasonably probable that the court's factual findings, if entered into the record, would have been in favor of Mother's continued custody. (Accord, *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1137 [holding that the court's error in failing to provide a statement of factual findings was harmless because the evidence showed that despite reasonable efforts, the mother could not safely parent her children on a full-time basis], disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6; *In re Jason L.* (1990) 222 Cal.App.3d 1206 [concluding that the father was not prejudiced by the court's failure to make factual findings to support the removal, where the court's disposition order was supported by clear and convincing evidence].)

First, Mother refused to acknowledge and address her substance abuse problems. Jonathan reported that both parents drank beer together, and that Mother still drank beer after their separation. He stated that Mother would get drunk and hit him and his brother. A DCFS social worker observed many empty beer cans and beer bottles inside the garage of the family home where Mother resided. Mother failed to provide a plausible explanation for the source of the empty bottles and cans. Father also stated that he had previously used methamphetamines with Mother in 2007. He told DCFS, that based on her appearance, Mother appeared to be using methamphetamines again since she moved back into maternal grandmother's home. Also, Mother often left the children for days at a time with maternal grandmother, to spend time with her drug-using boyfriend Richie. Although Mother agreed to drug testing, she failed to show up for two of the three drug tests, despite DCFS offering to provide her transportation to the testing site. Mother's substance abuse makes her home environment unsafe and unreliable for the children.

Second, Mother was unable to obtain stable housing or a telephone throughout the dependency proceedings. Mother declined the social worker's offer to provide referrals to homeless shelters for her and the children. Due to maternal grandmother's restraining order against Mother, Mother could no longer live in the family's home. The record indicates that Mother was still looking for stable housing and a job prior to the disposition hearing. Mother also failed to enroll Jose in school, despite DCFS advising her that it was against the law to keep him out of school. Under these circumstances, Mother is incapable of providing proper care for the children or a stable home environment, and even appears unwilling to ensure that Jose is afforded an education, as required by law. Allowing Mother to have custody of the children would be detrimental not just to their physical safety and well being, but also to their developmental progress as children.

Lastly, Mother also maintained her relationship with Richie, who, as discussed in detail above, endangered the children. Based on this evidence, the juvenile court was not likely to allow Mother to maintain custody of the children even if the court had provided a statement of facts to support removal. Mother did not have a stable home to provide for

the children, had on-going, unresolved substance abuse problems, and jeopardized the children's safety by exposing them to a dangerous individual. Substantial evidence supports the court's determination that Mother was unable to provide proper care for the children, and that the children would suffer physical harm if they remain with Mother.

Mother further argues that with appropriate services provided by DCFS, Jose and Jonathan could have remained in her home. Mother proposes that DCFS could have provided her with "[u]nannounced visits, in-home parenting services, in-home counseling services, and random testing" in order to maintain the children's safety and well-being in her custody. Yet, DCFS previously offered referrals for homeless shelters, drug testing, and transportation to Mother, but Mother failed to utilize or outright refused these services. More importantly, Mother's proposed services would not protect the children from Mother's association with Richie and would not address Mother's lack of a stable home. Mother's history does not support a conclusion that additional services would protect the children at this juncture.

We affirm the court's disposition removing custody of the children from Mother because it is supported by substantial evidence of parental inability to provide proper care for Jose and Jonathan, and that remaining with Mother would be detrimental to Jose and Jonathan. Although the court should have issued a statement of factual findings in support of the removal disposition, the error was not prejudicial based on the ample evidence supporting removal.

4. The Court Did Not Abuse Its Discretion in Ordering Monitored Visitation

Mother argues that the court erred in ordering Mother's visitation to be monitored. She asserts that it was an abuse of discretion to require monitoring because it caused her to see her children less frequently and for shorter periods of time. Mother argues that the monitoring was unnecessary because all of the parenting issues brought to the attention of the juvenile court were no longer current or ongoing and did not place the children at risk of harm.

The juvenile court orders visitation pursuant to section 362.1, subdivision (a) to maintain ties between the child and parent, and to provide DCFS with information relevant to its decision whether to reunify the child and parent. Under section 362.1, subdivision (a)(1)(A), visitation is to be as frequent as possible and consistent with the child's well-being and safety.

Here, the court ordered that Mother be given monitored visitation of her children at a minimum of two to three times per week and a minimum of two to three hours per visit. We find that the monitored visits were warranted based on Mother's exposure of the children to Richie and Mother's substance abuse, both of which are discussed in detail above. Additionally, the court's decision is supported by evidence of Mother's inappropriate discipline of the children. Jonathan told the social worker that Mother had cut his hand while spanking him and that it hurt. Jonathan also stated that Mother hit his butt, tailbone, and face. Jonathan stated to a social worker that sometimes Mother "gets drunk and hits us," and explained that Mother "always smacks me in my face and it always bleed[s] and [Mother] hits [Jose] on his head with a belt." Jonathan also told a social worker that Mother was mean to him and Jose and tried to "torture" them. Father also stated to DCFS that he had seen Mother "whoop" Jose for acting out and misbehaving when he had resided with Mother.

Based on Mother's substance abuse history, her history with Richie, and her inappropriate discipline of the children, we conclude that the court did not abuse its discretion in requiring her visits to be monitored. The children's well-being and safety is the primary concern when ordering visitation. Under these facts, monitored visitation protects the children from further, avoidable abuse by Mother. We therefore affirm the court's visitation order as it was not arbitrary, capricious, or patently absurd.

DISPOSITION

The juvenile court's judgment finding jurisdiction, dispositional order, and visitation order are affirmed.

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KITCHING, Acting P. J.

We concur:

ALDRICH, J.

KUSSMAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.